

REMARKS

Claims 13, 17, 19, and 23 are currently being amended to clarify Applicant's previous amendment by limiting the copolymer component (B-1) to a propylene/ethylene copolymer, which expressly excludes terpolymers. The amendments presented herein do not introduce new matter within the meaning of 35 U.S.C. §132. Accordingly, the Examiner is respectfully requested to enter these amendments.

1. Rejection of Claims 19-24 Under 35 U.S.C. §112, 1st Paragraph

Applicant respectfully traverses the rejection of claims 19-24 under 35 U.S.C. §112, first paragraph, for failing to comply with the written description requirement.

The instant Office Action states on page 2,

Claims 19-24 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The concept where copolymer (B-2) possesses a blockness (CSD) of "greater than 0 and equal to or less than 0.8," as recited in instant claims 19 and 23. Only the range of "less than 0.8" is supported by the Specification, as originally filed.

Applicant respectfully responds as follows with respect to the instant rejection.

As outlined in MPEP §2163, there is no *in haec verba*

requirement to satisfy the written description requirement under 35 U.S.C. §112, first paragraph. In fact, as outlined in the aforementioned section of the MPEP, "the fundamental factual inquiry is whether the specification conveys with reasonable clarity to those skilled in the art that, as of the filing date sought, applicant was in possession of the invention as now claimed." See *Vas-Cath, Inc.*, 935 F.2d at 1563-64, 19 USPQ2d at 1117. Additionally, it is sufficient to satisfy the written description requirement of 35 U.S.C. 112, first paragraph, inasmuch that the specification, "convey clearly to those skilled in the art the information that the applicant has invented the specific subject matter later claimed." See *In re Wertheim*, 541 F.2d 257, 262, 191 U.S.P.Q. 90, 96 (C.C.P.A. 1976), and *In re Ruschig*, 379 F.2d 990, 996, 154 U.S.P.Q. 118, 123 (C.C.P.A. 1967). Furthermore, the disclosure must, "allow one skilled in the art 'to visualize or recognize the identity of' the subject matter purportedly described." See *Koito Mfg Co., Ltd. v. Turn-Key-Tech, LLC*, 381 F.3d 1142, 1154 (Fed. Cir. 2004), quoting *Enzo Biochem, Inc. v. Gen-Probe Inc.*, 323 F.3d 953, 968 (Fed. Cir. 2002).

With respect to whether the currently claimed blockiness (CSD) of copolymer (B-2) (i.e., "greater than 0 and equal to or less than 0.8") in Applicant's currently claimed compositions satisfies the written description requirement of 35 U.S.C. §112, first paragraph, Applicant's specification states on page 4, lines 24-27,

In the copolymer (B-2), the molecular weight distribution

(Mw/Mn) by gel permeation chromatography is 3.0 or less, preferably 2.8 or less, and more preferably 2.6 or less. A blockness (CSD) measured using the measured value of NMR is 1.3 or less, preferably 1.0 or less, and more preferably 0.8 or less.

Therefore, as outlined above, Applicant's specification clearly states the propylene copolymer can comprise a blockness of 1.3 or less, preferably 1.0 or less, and more preferably comprises a blockness of 0.8 or less. Accordingly, Applicant respectfully believes one skilled in the art would clearly recognize Applicant's specification was in possession of the currently claimed blockness of greater than zero and equal to or less than 0.8 at the time of filing, especially given Applicant's specification clearly articulates the blockness of copolymer (B-2) can be 1.3 or less, preferably 1.0 or less, and more preferably 0.8 or less. In other words, since one skilled in the art would clearly recognize that the (B-2) copolymer can comprise a blockness of 0.8 or less, given the explicit disclosure in Applicant's specification, one skilled in the art would clearly recognize that Applicant was in possession of Applicant's currently claimed compositions, wherein the (B-2) copolymer comprises a blockness of 0.8 or less, but greater than zero.

In fact, as noted *supra*, it is not necessary that the claimed subject matter be described in *ipsis verbis* to satisfy the written description requirement of 35 U.S.C. §112. See *Heymes v. Takaya*, 6 U.S.P.Q.2d 1448 (BPAI 1988), *aff'd*, 10 U.S.P.Q.2d 1473 (Fed. Cir.

1989). Additionally, see *In re Wertheim*, 541 F.2d 257, 262, 191 U.S.P.Q. 90, 96 (C.C.P.A. 1976) in which Wertheim narrowed the concentration range of solids in coffee extracts to between 35% and 60%, even though Wertheim originally claimed 25-60% and there was no literal support for the newly narrowed range. In fact, the CCPA held that the U.S. Patent and Trademark Office failed to establish a *prima facie* case of noncompliance with the written description requirement even though there was no literal support for the narrowed range. Therefore, Applicant respectfully believes the Examiner has not articulated, nor demonstrated, why one skilled in the art would not have recognized that Applicant was in possession of the currently claimed blockness of greater than zero and equal to or less than 0.8, especially in view of Applicant's specification, which discloses the copolymer (B-2) comprises a blockness of 1.3 or less, and more preferably a blockness of 0.8 or less.

In light of the facts outlined above, Applicant respectfully believes claims 19-24 satisfy 35 U.S.C. §112, first paragraph, including the written description requirement, and that one of ordinary skill in the art would recognize Applicant was in possession of the currently claimed inventive subject matter at the time of filing. As such, Applicant respectfully believes the current rejection should be withdrawn.

2. Rejection of Claims 7-24 Under 35 U.S.C. §102(b) to U.S.

Patent 6,191,219

The instant Office Action states that claims 7-24 are rejected under 35 U.S.C. §102(b) as being anticipated by Tanaka, et al. (U.S. Patent 6,191,219).

First and foremost, Applicant respectfully takes this opportunity to clarify what claims are currently pending, or at least should be pending, in this application. On September 30, 2008, Applicant filed a response and amendment adding new claims 7-12 after a final rejection. In an advisory action mailed October 16, 2008, the Examiner indicated that these new claims were not entered. Thereafter, on May 1, 2009, Applicant filed a response and Request for Continued Examination (RCE), while cancelling all of the previously filed claims, including claims 7-12. In particular, Applicant believes that upon filing the RCE on May 1, 2009, claims 7-12, which were previously not entered, should have been retroactively entered and then subsequently cancelled in light of Applicant's amendment provided with the RCE. As such, after Applicant's amendment and RCE filed on May 1, 2009, only claims 13-24 should have been pending in the instant application, which should also be the only claims currently pending. Therefore, based on the above facts, Applicant respectfully believes the rejection to claims 7-12 in the instant Office Action is rendered moot.

Moving on, with respect to claims 13-24, Applicant responds as follows. As outlined in Applicant's previous responses, for a

reference to anticipate an invention, all of the elements of that invention must be present in the reference. The test for anticipation under section 102 is whether each and every element as set forth in the claims is found, either expressly or inherently, in a single prior art reference. *Verdegaal Bros. V. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The **identical invention** must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989) (emphasis added). The elements must also be arranged as required by the claim. *In re Bond*, 15 USPQ2d 1566 (Fed. Cir. 1990). There must be no differences between what is claimed and what is disclosed in the applied reference. *In re Kalm*, 154 USPQ 10, 12 (CCPA 1967); see also *Scripps v. Genentech Inc.*, 18 USPQ2d 1001, 1010 (Fed. Cir. 1991). Moreover, it is incumbent upon the Examiner to identify wherein each and every facet of the claimed invention is disclosed in the applied reference. *Ex parte Levy*, 17 USPQ2d 1461, 1462 (BPAI 1990). And the Examiner is required to point to the disclosure in the reference "by page and line" upon which the claim allegedly reads. *Chiong v. Roland*, 17 USPQ2d 1541, 1543 (BPAI 1990).

Arguments outlined in all of Applicant's previous responses are incorporated herein by reference in their entirety. With respect to the currently pending rejection to Tanaka, et al., Applicant has amended each independent claim to clarify that copolymer (B-1) is limited to a propylene/ethylene copolymer. In other words,

homopolymers, terpolymers, and any other polymers having a combination of olefin monomers other than only propylene and ethylene, in the requisite weight percentages, are excluded.

As noted in Applicant's previous response, claims 13-24 recite **copolymer (B-1) is a propylene copolymer with ethylene**, wherein the copolymer has from more than 50% by weight to 85% by weight of propylene. Alternatively, Tanaka, et al. discloses that polymer (C) is a propylene/ethylene/1-butene **terpolymer**, which comprises 50-88% by mole of propylene, 2-30% by mole of ethylene, and **10-40% by mole of 1-butene, wherein the amount of 1-butene is greater than the amount of ethylene**. See col. 1, line 60 - col. 2, line 2; and col. 6, lines 33-42. Accordingly, given Applicant's amendment supplied herewith, as well as the comments above, Applicant respectfully believes claims 13-24 are novel over Tanaka, et al.

Additionally, as noted in Applicant's previous response of May 1, 2009, Tanaka, et al. discloses the importance of the specifically described terpolymer, including the importance of the specifically described propylene, ethylene, and 1-butene monomer content ranges within the terpolymer. In particular, in col. 6, lines 43-49, Tanaka, et al. discloses,

By adjusting the chemical composition of the propylene/ethylene/1-buten [sic] random copolymer (C) to the above proportion, the copolymer (C) will have a better balance between the elastomeric property, on the one hand, and the compatibilities of the copolymer (C) with the polypropylene resin (A) and with the ethylene/ α -olefin random copolymer (B), on the other hand.

Contrastingly, Applicant is currently claiming polypropylene resin compositions comprising components (A) and (B), wherein the resultant compositions have an improved balance of optical and mechanical properties, including transparency (e.g., low haze values), rigidity (e.g., high Young's modulus values), and impact resistance. In particular, a valuable balance of properties is obtained by modifying the polypropylene component (A) as defined in the present claims (i.e., a propylene homopolymer or a copolymer with up to 5% by weight of copolymer(s)) by adding up to 60% by weight of a copolymer component (B) comprising two different propylene copolymers, namely (B-1) and (B-2), wherein (B-1) has more than 50% to 85% by weight of propylene, (B-2) comprises 50% by weight or less of propylene, and the ratio of the limiting viscosity of the copolymer (B-1) to the viscosity of the polypropylene component (A) ($[\eta]_{B-1}/[\eta]_A$) is 1.5 or less, while the ratio of the limiting viscosity of the copolymer (B-1) to the viscosity of copolymer (B-2) ($[\eta]_{B-1}/[\eta]_{B-2}$) is 0.8 or more. The selection of the aforementioned components, in terms of composition and amounts, including the aforementioned limiting viscosity ratios, results in obtaining polypropylene resin compositions comprising an improved balance of optical and mechanical properties, such as those stated above (i.e., transparency, rigidity, and Young's modulus values), as demonstrated in the examples of the present application.

In fact, with reference to Table 1 on pages 19 and 20 in

Applicant's specification, Comparative Example 3 shows that when the value of $[\eta]B-1/[\eta]A$ is higher than 1.5, namely 1.8, the haze value becomes remarkably high, (i.e., 83), while Comparative Example 1 shows that when the value of $[\eta]B-1/[\eta]B-2$ is lower than 0.8 (i.e., 0.7), the haze value is lowered but still relatively high (i.e., 32) versus 24 or less in Examples 1-6. As shown in Comparative Example 4, a way of reducing the haze could be to increase the amount of ethylene in the polypropylene component (A) over the upper level of 5% by weight required by the present claims (e.g., namely 8% in Comparative Example 4); however, as a result, the Young's modulus is significantly decreased. On the contrary, the currently claimed compositions display much lower haze values and higher Young's modulus values, even when component (A) is a propylene homopolymer. Furthermore, the currently claimed compositions comprise a greater low temperature impact strength compared to compositions not having the currently claimed copolymer component (B-2). See Comparative Example 2 in Table 1 (cont.) on page 20 in Applicant's specification.

Therefore, for the reasons outlined above, as well as for all of the reasons outlined in all of Applicant's previous responses, which are incorporated herein by reference in their entirety, Applicant respectfully believes not only are the currently claimed compositions novel over Tanaka, et al., but that they are also patentably distinct over Tanaka, et al. As such, Applicant

respectfully believes the instant rejection should be withdrawn.

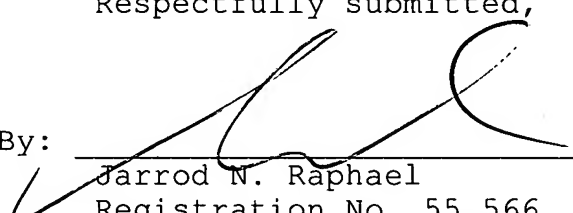
CONCLUSION

Based upon the above remarks, the presently claimed subject matter is believed to be novel and patentably distinguishable over the prior art of record. The Examiner is therefore respectfully requested to reconsider and withdraw all rejections, and allow all pending claims 13-24. Favorable action with an early allowance of the claims pending in this application is earnestly solicited.

The Examiner is welcomed to telephone the undersigned practitioner if he has any questions or comments.

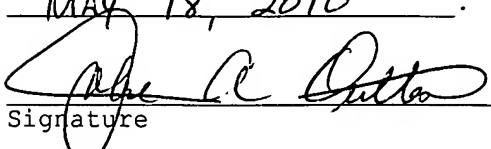
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